

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RALPH BUCK PHILLIPS,

Plaintiff,

-v-

9:12-CV-0610
(DNH/RFT)

T. LAVALLEY, Superintendent, Clinton Correctional Facility, sued in personal and official capacity; M. LAMOUNTAIN, Correction Officer, Clinton Correctional Facility, sued in personal and official capacity; S. BROWN, Deputy Supt. Security, Clinton Correctional Facility, sued in personal and official capacity; C. DELUTIS, Sergeant (SHU), Clinton Correctional Facility, sued in personal and official capacity; J. LUDWIG, Sergeant, Clinton Correctional Facility, sued in personal and official capacity; M. LAFOUNTAIN, Correction Officer, Clinton Correctional Facility, sued in personal and official capacity; J. FARRELL, Correction Officer, Clinton Correctional Facility, sued in personal and official capacity; A. FRENYA, Correction Officer, Clinton Correctional Facility, sued in personal and official capacity; C. GADWAY, Correction Officer, Clinton Correctional Facility, sued in personal and official capacity; BEZIO, Correction Officer, Clinton Correctional Facility, sued in personal and official capacity; LECLAIRE, Correction Officer, Clinton Correctional Facility, sued in personal and official capacity; SEAN LILLED AHL, Correction Officer, Clinton Correctional Facility, sued in personal and official capacity; MORROW, Correction Officer, Clinton Correctional Facility, sued in personal and official capacity; and JOHN DOE, Correction Officer, Clinton Correctional Facility, sued in personal and official capacity,

Defendants.

APPEARANCES:

RALPH BUCK PHILLIPS
06-B-3437
Plaintiff, Pro Se
Upstate Correctional Facility
P.O. Box 2001
Malone, NY 12953

HON. ERIC T. SCHNEIDERMAN
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Attorneys for Defendants
The Capitol
Albany, NY 12224

OF COUNSEL:

LAURA A. SPRAGUE, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff brought this action pursuant to 42 U.S.C. § 1983. On March 1, 2013, the Honorable Randolph F. Treece, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion to dismiss be granted and ordered that plaintiff's cross-motion to amend be granted in part and denied in part. No objections to the Report-Recommendation were filed. Plaintiff filed an Amended Complaint on March 1, 2013.¹

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

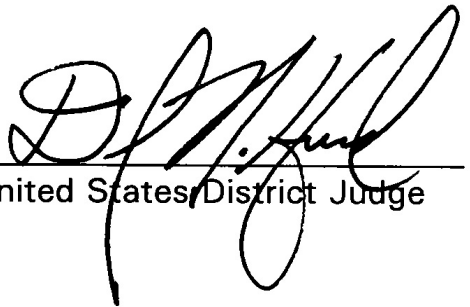
Therefore it is

ORDERED that

¹ Pursuant to Judge Treece's Report-Recommendation and Order, plaintiff's Amended Complaint, ECF No. 39 (with paragraphs 3(n)-3(q), 66-111, and 123-26 stricken), is now the operative pleading.

1. Defendants' motion to dismiss is GRANTED;
2. All claims against defendants LaValley and Brown are DISMISSED for lack of personal involvement; and
3. All claims for monetary damages against all defendants in their official capacities are DISMISSED pursuant to the Eleventh Amendment.

IT IS SO ORDERED.



United States District Judge

Dated: April 17, 2013
Utica, New York.